4727

SUPREME COURT OF THE UNITED STATES.

No. 149.

CHARLES BLIVEN AND EDWARD B. MEAD, PLAINTIFFS IN ERROR,

vs.

THE NEW ENGLAND SCREW COMPANY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Clerk's certificate	1	1
Appeal of defendants	2	1
Writ of error	5	2
Bond on writ of error	7	3
Citation and service	11	4
Proceedings in circuit court	13	5
Declaration	14	5
Defendants' plea	19	7
Issue joined	19	7
Verdict of jury	20	8
Judgment	21	8
Bill of exceptions	23	8
Testimony of Jonathan L. Slocum	25	9
Letter from defendants to plaintiffs	54	21
Testimony of Archibald Y. Paddock	63	26
" John G. Bogart	64	27
Deposition of William Whitaker	67	28
" Nathaniel A. Eddy	71	29
" John C. Mather	74	30
" William T. Grinnell	77	32
" James Tiffany	81	33
" Caleb Congdon	84	34

GIDEON, Print.

	Original.	Print.
Circular issued by plaintiffs	86	35
Letter from plaintiffs to defendants	87	36
Testimony of Jonathan L. Slocum	89	37
Letter from defendants to plaintiffs	90	37
Testimony of Jonathan L. Slocum	95	39

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this [L. S.] second day of December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

KENNETH G. WHITE,
Clerk.

CHARLES BLIVEN, EDWARD B. MEAD,
vs.
THE NEW ENGLAND SCREW COMPANY.

To the honorable the Supreme Court of the United States.

The appeal of Charles Bliven and Edward B. Mead, the defendants above named, respectfully showeth, that heretofore the above named plaintiffs, The New England Screw Company, brought their suit in the circuit court of the United States for the southern district of New York, in the second circuit, against the above named defendants, and by their bill or declaration demanded judgment against the above named defendants *and by their bill or declaration demanded judgment against the above named defendants* in a plea of trespass on the case upon promises.

That the defendants duly pleaded that they did not undertake or promise in manner and form as the plaintiffs had in their declaration complained against them, the defendants; that such proceedings were had in the said cause, that on the 23d day of September, 1857, a judgment was rendered therein by the said circuit court in favor of the plaintiffs against the defendants for one thousand nine hundred and ninety dollars and one cent, with interest thereon from the 27th day of June, 1853; which said judgment of the said circuit court is, as these defendants are advised, erroneous, and ought to be reversed.

Wherefore these defendants appeal from the said judgment of the twenty-third day of September, 1857, to the Supreme Court of the United States, and respectfully pray that the said judgment of the said circuit court, and the pleadings, depositions, evidences,

proceedings and record in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said judgment of the circuit court may be reversed, and a judgment made against the plaintiffs therein, with costs, or such other judgment as to the said Supreme Court shall seem just.

Dated New York, October 1, 1857.

CHAS. BLIVEN,
EDWARD B. MEAD.

WRIGHT & MERRIHEW,
Att'ys for Def't.

(*Endorsed:*)

Circuit Court of the United States for southern district of New York. Charles Bliven and Edward B. Mead ads. New England Screw Company. Appeal, &c.

WRIGHT & MERRIHEW,
Def't's Att'y.

Filed Oct. 3, 1858.

UNITED STATES OF AMERICA, *ss.*

[L. S.]

The President of the United States of America to the Judges of the Circuit Court of the United States for the southern district of New York, in the second circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between The New England Screw Company, plaintiffs, and Charles Bliven and Edward B. Mead, defendants, a manifest error hath happened, to the great damage of the said Charles Bliven and Edward B. Mead, as is said, and as appears by their complaint: We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Hon. R. B. Taney, Chief Justice of the Supreme Court of the United States, this first day of October, in the year

of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the second circuit.

The return to the within writ of error appears in the schedule hereto annexed.

[L. S.] KENNETH G. WHITE,
Clerk.

Filed Oct. 2, 1857.

Circuit Court of the United States for the southern dist. of New York.

CHARLES BLIVEN AND EDWARD B. MEAD ads. THE NEW ENGLAND SCREW COMPANY. } In Error.

Know all men by these presents, that we, Charles Bliven, of Yonkers, Westchester county and State of New York, Edward B. Mead, of Brooklyn, Kings county and State of New York, George Briggs, of the city of New York, and Joseph H. Westcott, of the city New York, are held and firmly bound unto the above named, The New England Screw Co., in the sum of five thousand dollars, to be paid to the said The New England Screw Company, its successors or assigns; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly, by these presents. Sealed with our seals, and dated the first day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named Charles Bliven and Edward B. Mead have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States for the southern district of New York, in the second circuit:

Now, therefore, the condition of this obligation is such, that if the above named Charles Bliven and Edward B. Mead shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES BLIVEN, [L. S.]
EDWARD B. MEAD, [L. S.]
GEORGE BRIGGS, [L. S.]
JOSEPH H. WESTCOTT. [L. S.]

Sealed and delivered in presence of—
GEO. W. WRIGHT.

Taken and acknowledged before me, this 1st day of Oct., 1857.
KENNETH G. WHITE,
U. S. Com'r.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

George Briggs being duly sworn, deposeth and saith, that he is a freeholder and resident of the city of New York, and is worth the sum of ten thousand dollars over and above all his debts and liabilities, and property exempt by law from execution.
GEORGE BRIGGS.

Taken and sworn before me, this 1st day of Oct., 1857.
KENNETH G. WHITE,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Joseph H. Westcott being duly sworn, deposeth and saith, that he is a freeholder and resident of the city of New York, and is worth the sum of ten thousand dollars over and above all his debts and liabilities, and property exempt by law from execution.
JOSEPH H. WESTCOTT.

Taken and sworn before me, this 1st day of October, 1857.
KENNETH G. WHITE,
U. S. Com'r.

I approve of the above named sureties as sufficient security for the sum named in the above bond.
SAML. R. BETTS.

New York, Oct. 1, 1857.

(*Endorsed:*)

Circuit Court of the U. S. for the southern district of New York. Charles Bliven and Edward Bliven ads. The New England Screw Co. Bond on writ of error. Wright & Merrihew, def't's att'y. Filed Oct. 2d, 1857.

UNITED STATES OF AMERICA, *ss.*

To the New England Screw Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, for the second circuit, wherein Charles Bliven and Edward B. Mead are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should

not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, this first day of October, in the year of our Lord 1857.

SAML. R. BETTS,
One of the Judges of the Circuit Court of the United States for the Southern District of New York.

Due service of the within citation is admitted October 1st, 1857.
The NEW ENGLAND SCREW COMPANY,
By G. W. STOUGHTON,
Their Attorney.

Filed Oct. 2, 1857.

Pleas before the Judges of the Circuit Court of the United States for the southern district of New York, in the second circuit, held at the city of New York, on the sixth of October, as yet of the term of April, one thousand eight hundred and fifty-seven.

Witness: SAMUEL NELSON, Esq.,
Circuit Judge.

KENNETH G. WHITE,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered that on the third Monday of October, in the stated term of October, in the year of our Lord one thousand eight hundred and fifty-three, before the judges of the circuit court of the United States for the southern district of New York, in the second circuit, at the city of New York, come The New England Screw Company, by Harrington & Dodge, their attorneys, and bring into the said court, before the aforesaid judges thereof now here, *and* their certain bill against Charles Bliven and Edward B. Mead, being in custody, &c., of a plea of trespass on the case upon promises, which said bill is as follows, that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss.*

The New England Screw Company, plaintiffs in this action, all the stockholders and corporat*ions* of which are citizens of the State of Rhode Island, and said company being a corporation created by and under the laws of the State of Rhode Island, duly organized and carrying on and conducting the business of manufacturing and selling screws, at Providence, in the State of Rhode Island, by Harrington & Dodge, their attorneys, complain of Charles Bliven and Edward B. Mead, who are citizens of the State of New York,

defendants in this action, in custody, &c., of a plea of trespass on the case upon promises; for that whereas the said defendants, on the 26th day of September, in the year of our Lord 1853, at the southern district of New York, being copartners in trade and business under the name, style, and firm of Bliven & Mead, were indebted to the said plaintiffs in the sum of five thousand dollars, of lawful money of the United States of America, for divers goods, wares, and merchandise, by the said plaintiffs before that time sold and delivered to the said defendants, and at the special instance and request of the said defendants; and being so indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

And whereas also the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiffs had before that time, at the like special instance and request of the said defendants, sold and delivered to the said defendants divers other goods, wares, and merchandise, of the said plaintiffs, the said defendants then and there undertook and faithfully promised the said plaintiffs that the said defendants would well and truly pay to the said plaintiffs so much money as the last aforesaid goods, wares, and merchandise, at the time of the sale and delivery thereof, was reasonably worth, when the said defendants should be thereunto afterwards requested; and the said plaintiffs aver that the said goods, wares, and merchandise, last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further sum of five thousand dollars of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, had notice.

And whereas also the said defendant afterwards, to wit, on the same day and year, and the place aforesaid, were indebted to the said plaintiffs in the further sum of five thousand dollars of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiffs to the said defendants, and at the like request of the said defendants, and for other money by the said plaintiffs before that time paid, laid out and expended for the said defendants, and at the like request of the said defendants, and for other money by the said defendants before that time had and received to and for the use of the said plaintiffs; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said several sums of mo-

ney in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendants afterwards, to wit, on the same day and year and at the place aforesaid, accounted, together with the said plaintiffs, and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendants were then and there found to be in arrear and indebted to the said plaintiffs in the further sum of five thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendants in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendants (although often requested, &c.) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto refused, and still do refuse, to the damage of the said plaintiffs five thousand dollars, and therefore the said plaintiffs bring suit, &c.

And now at this day, that is to say, on the third Monday of October, as yet of the term of October, one thousand eight hundred and fifty-four, to which day the defendants had leave to

to the said declaration of the said plaintiffs, and then to answer the same before the judges aforesaid, at the City Hall, in the city of New York, come as well the said plaintiffs, by their attorneys aforesaid, as the said defendants, by Wright and Merrihew, their attorneys.

And the said defendants, by Wright and Merrihew, their said attorneys, defend the wrong and injury, &c.

And the said defendants, by Wright and Merrihew, their attorneys, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise in manner and form as the said plaintiffs have thereof above complained against them, and of this they put themselves upon the country, &c. Whereupon, the issue above joined is ordered by the court to be tried at a circuit court of the United States aforesaid, to be held at the City Hall, in the city of New York, in and for the southern district of New York, on the first Monday of April, one thousand eight hundred and fifty-five.

The same day is given to the parties aforesaid before the judges aforesaid, at the same place.

At which day last mentioned, before the judges aforesaid come

the parties aforesaid, by their respective attorneys aforesaid, and the jurors of the jury summoned to try the said issue being called, also come, and the jurors of the jury being thereupon chosen, tried and sworn to speak the truth in the matter within contained, say, upon their oath, that the defendants did undertake and promise in manner and form as the said plaintiffs have above complained against them; and, by direction of the court and consent of counsel, they find a verdict for the plaintiff for the sum of two thousand two hundred and fifteen dollars and twenty-one cents, subject to adjustment.

And because the said court, before the aforesaid judges thereof now here, is not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid in this same court, before the judges thereof, until the first Monday of April, in the term of April, one thousand eight hundred and fifty-seven, at the place aforesaid. And the same day is given to the same parties, at the same place, to hear the judgment of the court thereupon.

At that day and place last aforesaid, before the judges aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, whereupon all and singular the premises being seen and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court that the verdict aforesaid, in form aforesaid given, is in all respects good and valid in law, and anything the said defendants alleged to the contrary thereof in anywise notwithstanding; which verdict of the jurors aforesaid, as adjusted by the said judges, amounts to one thousand nine hundred and ninety dollars and one cent, and interest from the 27th day of September, 1853.

Therefore it is considered that the said plaintiffs do recover against the said defendants their said damages, as adjusted by the judge aforesaid, and five hundred and seventy-four dollars and sixty-two cents interest on the same; and also one hundred and three dollars and fifty cents for their costs and charges by the said court now here adjudged of increase to the said plaintiffs, and with their assent; which said damage, interest, and costs, in the whole, amount to $2,668 13.

Judgment signed this 11th Dec'r, 1857.

R. E. STILWELL,
Dep. Clerk.

Afterwards, to wit, at a circuit court of the United States for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the 12th day of May, 1855, before his honor Samuel Nelson, one of the justices of this court, according to the form of the statute in such case made and provided, the aforesaid issue so formed between the said parties as

aforesaid came on to be tried by a jury of the southern district of New York as aforesaid, for that purpose duly empanelled, good and lawful men of the said district. At which day came there, as well the said plaintiff as the said defendant, by their respective attorneys aforesaid; and the jurors of the jury aforesaid, empanelled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the said issue; and upon the trial of the said issue the counsel for the said plaintiff, to maintain and prove the said issue on his part, (the incorporation of the plaintiffs and the partnership of the defendants being admitted,) produced and read in evidence a letter written by the defendants to the plaintiffs, bearing date N. Y., the 19th May, 1853, as follows:

NEW YORK, *May* 19, 1853.

New England Screw Co. in acc. with Bliven & Mead.

By amount per your statement.....		$1,990 01
Less overcharge, Feb'y 9—		
New England charged 40 p. c.; should be.....	50 p. c.	
Wilson " 45 p. c.; "	55 p. c.	
		60 39
Average, March 27, '53.....		$1,929 62

Mr. H. L. KENDALL:

DEAR SIR: Yours with statement of account is received. We have deducted for overcharge, bill of February 9th, as per above statement, leaving balance $1,929 $\frac{62}{100}$, for which amount please draw 6 months from average date.

By reference to our letter and order of Sept. 30, Oct. 15, and Nov. 4 and 17, you will see that we cannot understand your letter of yesterday, unless you are more than 6 months behind your orders. Do send the whole or any part of the piano screws.

Yours, respectfully,

BLIVEN & MEAD.

The counsel for the plaintiff, further to maintain and prove the said issue on his part, called Jonathan L. Slocum, who being then sworn as a witness on behalf of the plaintiffs, testified, in substance, as follows:

I am in the employ of the plaintiffs, and until quite recently I had charge of their books, accounts, and correspondence. I am now their secretary. The defendants were customers of ours. They reside in New York, and dealt in all kinds of hardware. Whether they dealt on commission or otherwise I do not know. In 1852 they purchased screws from us.

Being shown the letter of the 19th of May, (before read,) the witness testified, that near the close of the year 1852, we reduced the discount on first quality screws from 45 to 40 per cent., and on the Wilson screws from 55 to 45 per cent. The difference between the defendants and the company, and which they refer to in the item "less overcharge $60 39," arose thus: We received from the defendants in October, 1852, an order for screws, which we accepted, without any reservation as to any change we might make in our rates of discount. Subsequently, and on the 17th November, 1852, we received another order from them. The screws charged in the bill rendered to the defendants, referred to in their letter of 19th of May, were charged at our regular rates at the time. The discount at the time the October order was received was 50 per cent. on the New England screws. This order was to be delivered in two parcels. Between the time of receiving the defendants' orders and their being taken up the rates of discount had changed, but we executed them at the rates of discount of the time when the orders were received, with the exception of the order dated 17th November, which was made subject to any future charges.

The items of March and April charged in the bill rendered were sent by us under the October order, and that of February under the order of 17th November, 1853.

The counsel for the defendants, to maintain and prove the said issue on their part, then examined the said Jonathan L. Slocum, who, on his cross-examination, testified that he has been in the employment of the plaintiff since 1st January, 1849. They are manufacturers of wood screws; they are gimlet or sharp-pointed screws. They have been manufacturing them since 1840, and have been largely engaged since September, 1852. Between the 30th September, 1852, and the 30th Sept., 1853, there was no other manufactory in this country of gimlet or sharp-pointed screws. The difference between the screws denominated New England and Wilson is in quality merely; the latter are inferior to the former. I am acquainted with Henry L. Kendall; he is now and has been for a number of years *being* the general agent of the plaintiffs; he is also a stockholder and a director of the company. As their agent, he makes contracts and transacts the general business of the company. He has the supervision of their books, papers, and letters. He has been such agent and exercising these powers since the year 1849, and prior thereto. I was in the habit of writing business letters for the plaintiffs, under the direction and in the name of Henry L. Kendall, the agent of the company. Being shown a letter (produced by the plaintiffs upon notice,) bearing date the 30th September, 1852, the witness stated that it was received by the company from the defendants, and it was then read in evidence, as follows:

NEW YORK, *Sept.* 30, 1852.

DEAR SIR: Presuming from the long delay in executing our orders we give below a memorandum of the balance due on our order of June 29th:

⅜. 200, 490, 500, 170, ½, 190, 400, 100, 80, 30, 20, ¾, 30, 190.
2 3 4 5 2 3 4 5 6 8 5 6.

⅞. 100, 50, 20, 30, 20, 1, 10, 1¼, 30, 10, 1½, 40, 1¾, 30, 15, 2½,
8 11 12 13 7 13 16 18 16 16 18.
10, 17, 2, 10, 6, 3, 63.
16 18 19 20 22 22.

August 18.

½. 50, 50, ⅝, 50, 70, 150, 190, 90, 10, ¾, 100, 70, 100, 1, 220, 20.
6 7 4 5 6 7 8 9 6 7 8 9 13.

1¼. 40, 1¾, 15, 20, 1½, 50, 40, 2, 20, 25, 30, 10, 2½, 15, 20.
15 16 17 11 15 16 18 19 20 16 19.

3. 8, 10.
18 19.

Please add to the above, and send all you can at once, and the balance soon after as possible, either N. E. or Wilson's.

⅜. 100, 200, 200, ½, 100, 100, 400, 200, 50, 50.
2 5 6 2 3 4 5 6 7.

⅝. 50, 150, 350, 300, 200, 100, 100, ¾, 70, 400, 300, 400, 300,
4 5 6 7 8 9 10 5 7 8 9 10
150, 80.
11 12.

⅞. 30, 50, 60, 60, 50, 40, 1, 100, 200, 500, 100, 200, 100, 100, 100.
7 8 9 10 11 12 6 7 8 9 10 11 12 14.

1¼. 50, 200, 300, 100, 100, 60, 20, 1½, 50, 50, 30, 10, 40, 1¾,
8 9 10 11 14 15 16 13 14 15 16 17
50, 50, 20, 30.
14 15 16 17.

2. 50, 2½, 20, 3, 10, 10, 10, 10, 3½, 5, 5, 5, 5.
15 18 18 19 21 22 18 20 22 24.

4. 5, 5, 5.
20 22 24.

We would call your attention to the fact that, of our order June 29th, for 2,370 gro. ⅜ and ½ screws, you have sent us but 190 gross, who get them all. This is about ¼ per cent. on our order after three months. Please send us a sample card and a lot of price lists. We have never had a card. We have not a gross of screws under inch in stock. Respectfully yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the defendants also showed to the witness a letter, produced by the counsel of the plaintiffs upon notice, bearing date the 5th October, 1852, and the witness then testified that the said last mentioned letter had been received by the plaintiffs from the defendants, and it was then read in evidence, as follows:

NEW YORK, *Oct.* 5, 1852.

New England Screw Co. in account with Bliven & Mead.

July 28. By invoice	$435 84
Aug. 18. " "	16 18
Due Jan'y 30, 1853	452 64
Int. from Oct. 5, 1852, to Jan'y 30, –'53— 117 days, at the rate of 5 per cent. 6 mos.	14 69
	$437 95

GENT: We enclose our check on City Bank for four hundred and thirty-seven $\frac{95}{100}$ dollars, to pay your bills of July 28th and Aug. 18th, as per above statement.

Yours, respectfully,

BLIVEN & MEAD.

Please hurry up our orders, as we are suffering. The counsel for the defendants then produced, and proved, and read in evidence a letter from the plaintiffs to the defendants, marked No. 1, bearing date the 7th October, 1852, as follows:

PROVIDENCE, *Oct.* 7, 1852.

BLIVEN & MEAD, *N. Y.*

GENT: Your favor of the 5th inst. is just received. On the 21st of Sept., we drew on you at 6 months, from the average of the account, for 1,105$\frac{24}{100}$ dollars, and the draft went forward for acceptance at once, as we suppose. We therefore return your check, and will thank you to honor the draft when presented, if it has not already been accepted.

We will hereafter wait for you to remit, if you wish to pay cash. The orders to which you refer will be taken up at the earliest possible day.

Yours, truly,

NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JNO. L. SLOCUM.

The counsel for the plaintiffs then produced, upon notice, a letter from the defendants to the plaintiffs, which being proved, was read, as follows:

NEW YORK, *Oct.* 15, 1852.

MR. : DEAR SIR: Anticipating a short supply of gimlet P. screws for the next season, and to avoid the great inconvenience we now suffer in consequence of your not filling our orders, we thus early send you the annexed order, to be furnished the 15th March and the 15th of April next, at 6 months from these dates, at the present discount, subject to any reduction you may make before or at that time.

This is in addition to orders now in hand, which we trust you will now send without further delay, as most of the goods are sold to go through our western lakes, and unless sent within a week, will be too late for shipment. Advise us of the acceptance of the order.

Resp'ly, yours,
BLIVEN & MEAD.

To the NEW ENGLAND SCREW Co.

Order from Bliven & Mead for gimlet-point screws, half each, Wilson's, and premium, to be delivered, half each, 15th March and 15th of April next.

$\frac{3}{8}$ 100, 200, 200, 100, 50, $\frac{1}{2}$, 100, 300, 300, 200, 100, 50.
2 3 4 5 6 2 3 4 5 6 7.

$\frac{5}{8}$ 100, 300, 300, 300, 30, 50, $\frac{3}{4}$, 200, 300, 550, 400, 300, 200,
5 6 7 8 9 10 6 7 8 9 10 10
200, 100.
12 13.

1 200, 300, 400, 500, 600, 400, 200, 100, 50, 50, $1\frac{1}{4}$, 100, 200,
6 7 8 9 10 11 12 13 14 15 8 9
300, 300, 300.
10 11 12.

$1\frac{1}{4}$ 200, 200, 100, 50, 50, $1\frac{1}{2}$, 100, 200, 300, 300, 200, 100, 100,
13 14 15 16 17 10 11 12 13 14 15 16
50, 20.
17 18.

2 60, 100, 120, 100, 100, 50, 50, 10, 10, $2\frac{1}{2}$, 20, 20, 30, 30, 30,
12 13 14 15 16 17 18 19 20 14 15 16 17 18
20, 10.
19 20.

3 20, 20, 20, 30, 30, 20, 50, 20, 30, $3\frac{1}{2}$, 10, 10, 10, 10.
16 17 18 19 20 21 22 23 24 18 20 22 24.

4 $\frac{5}{22}$. $\frac{5}{24}$.

The counsel for the plaintiff also proved and read in evidence a letter from the plaintiffs to the defendants, marked No. 2, dated 16 Oct., 1852, as follows:

PROVIDENCE, *Oct.* 6, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 15th inst. is at hand, and your order entered to be executed at the times named. We shall do all we can to get your orders off that we now have in hand before navigation closes on the canals; but as we have a great many orders from other parties in the same condition, we can only take them up in course.

Yours truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JON'A L. SLOCUM.

We notice the small sizes in your order, and more than the proportion that we make of those sizes. In accepting your order, it must be understood that we furnish the sizes in proportions as we make them.

N. E. SCREW CO.

The counsel for the defendants then produced and read in evidence a letter from the defendants to the plaintiffs, marked D, bearing date the 4th November, 1852, as follows:

NEW YORK, *Nov.* 4, 1852.

GENT: Please place the following order upon your books, to be filled as fast as follows, at 55 p. c. in addition to our order of the 15th of October, and in addition to all previous orders.

You are certainly not filling our old orders in their turn. We have not a gross of salable gimlet-point screws in our store; do send us a lot by steamboat to-morrow.

Wilson Gimlet-point screws.

½. 100, 200, 200, 100, ⅝, 100, 200, 300, 200, 100, 50.
2 3 4 5 4 5 6 7 8 9.

¾. 100, 300, 300, 500, 400, 200, 100, 50, 1, 100, 200, 400, 500,
5 6 7 8 9 10 11 12 6 7 8 9
600, 300, 200.
10 11 12.

1. 100, 30, 50, 30, 1¼, 100, 200, 400, 300, 300, 200, 100, 100,
13 14 15 16 8 9 10 11 12 13 14 15
50, 30, 30.
16 17 18.

1½. 150, 200, 200, 200, 200, 150, 100, 50, 50, 1¾, 50, 40, 40.
10 11 12 13 14 15 16 17 18 14 15 16.

1¾. 30, 30, 30, 30, 2, 50, 50, 100, 100, 100, 50, 50.
17 18 19 20 12 13 14 15 16 17 18.

Please advise us by return mail how long we shall probably have to wait for the whole order.

Resp'tly, yours,
BLIVEN & MEAD.

P. S. You have only to give us a hint to discount our bill at the rate of 5 p. c. 6 months, when the risk is large enough.

To the NEW ENGLAND SCREW CO.

The counsel for the defendants then produced and read in evidence a letter from the plaintiffs to the defendants, bearing date the 6th Nov'r, 1852, as follows:

PROVIDENCE, *Nov.* 6, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 4th inst. is at hand, and the order is entered, to be taken up in due course. We think we shall reach it in about 2 months. We notice your remarks about paying cash. We feel no anxiety about the magnitude of your account, and as money is never worth 10 per cent. per annum to us, we would rather have you settle at any time by note or by acceptance, than by cash. We must remark in regard to Wilson's screws what we have, we think, said to you before, that they are with us an incidental product, and of course the supply limited and somewhat variable, and in taking orders for them, it is understood that we fill as far as we may be able to do so at the time.

Yours, truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JNO. L. SLOCUM.

The counsel for the defendants then produced and read in evidence a letter from the defendants to the plaintiffs, bearing date the 17th Nov., 1852, marked E, in the words and figures following, to wit:

NEW YORK, *Nov'r* 17, 1852.

Mr. H. L. KENDALL.

DEAR SIR: We are in great want of the following gimlet-point screws to fill quite a number of small orders, and hope you will send what you can of them by steamboat, and without delay. We think you cannot fully understand our wishes, as you have not sent us a gross of screws since Sept. 10th; we have always said send what you can of our orders as fast as you get a case or two ready, or to that effect.

G. P. screws, N. E. or Wilson's, to fill special orders.

$\frac{3}{8}$.	10,	20,	10,	40,	$\frac{1}{2}$,	10,	40,	20,	30,	20,	20,	10.
	2	3	4	5		2	3	4	5	6	7	8.

⅝. 10, 40, 40, 30, 80, 80, 30, ¾, 5, 10, 30, 70, 60, 50, 30, 20,
3 4 5 6 7 8 9 4 5 6 7 8 9 10 11
20, 5, 5.
12 13 14.

1. 20, 30, 90, 50, 30, 30, 50, 30, 5, 5, 1¾, 5, 20, 80, 100, 40,
6 7 8 9 10 11 12 13 16 17 7 8 9 10 11
10, 5.
14 15.

½. 10, 5, 20, 10, 30, 10, 10, 5, 5, 5, 5, 1¼, 5, 10, 25, 20, 20,
8 9 11 13 14 15 16 17 18 19 20 10 11 12 13 14
5, 5.
15 16.

2. 10, 5, 5, 10, 5, 10, 10, 5, 3, 2½, 5, 3, 4, 3, 5, 3.
11 12 14 15 10 16 18 19 20 12 13 15 16 18 19.

3. 1, 4, 2, 60, 3½, 2, 2, 2, 4, 2.
18 19 20 22 18 19 20 22.

You will of course send all you can in addition, as we have not a gross of any of these sizes for our daily sales; we should prefer that you consider this an additional order, as it would keep our stock in better order. You will please advise us how you take it, that we may keep our accounts correct.

Yours, truly,
BLIVEN & MEAD.

The counsel for the defendants then produced and read in evidence a letter from the plaintiffs to the defendants, marked No. 4, and bearing date the 19th November, 1852, as follows, namely:

PROVIDENCE, *Nov.* 19, 1852.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 17th inst. is at hand. The best we can do for you is to enter the order, to be taken up in course, say in about two months, and the screws to be charged at whatever price they may be selling for by us at date of invoice. The reason we have not sent any portion of your orders at once is, we have no stock of screws on hand; and to put up any portion of an order immediately after receiving it would delay those already in hand waiting their turn. Some months since we had some sizes that we could spare promptly when called for; but we are from hand to mouth all round now. If you do not advise us to the contrary we shall enter your order, to be taken up in course. Your orders now in hand will not be delayed unnecessarily.

Yours, truly,
NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JON'A L. SLOCUM.

The counsel for the defendants then read in evidence a letter from the defendants to the plaintiffs, marked F, and bearing date the 10th day of Feb'y, in the year 1853, in the words following, namely:

NEW YORK, *Feb'y* 10, 1853.

MR. KENDALL:

DEAR SIR: There is yet due us a lot of piano screws, ordered long time since. The party annoys us to death for them; please send them along.

Also remember we have not a gross of screws on hand, N. E. sample, and only half a dozen sizes of Wilson's. Please enter now on your books, to be filled soon after completing our present orders, 10,000 gro. Wilson screws and 10,000 gro. New England screws, same assortment as last two large orders—say to be filled in its turn, at such largest discount as you may be selling at the time of delivery.

Yours, truly,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW Co.

The counsel for the defendants then read in evidence a letter bearing date the 17th day of February, 1853, marked No. 5, in the words following, namely:

PROVIDENCE, *Feb'y* 17, 1853.

BLIVEN & MEAD, *N. Y.*

GENTS: Your favor of the 10th inst. is at hand, and your order will be entered to be taken up in course and filled as far as we may be able at that time, and at whatever price we may be selling screws for at the date of invoice. We are able to do very little at present with piano screws, so great is the pressure upon us for the common varieties. We sent you soon after the order was given what piano screws we could, and we think your customer had better not depend upon us for the balance.

Yours, truly,

NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Agt.*
By JON. L. SLOCUM.

The counsel for the defendants then read in evidence a letter from the defendants to the plaintiffs, marked G, and dated the 16th April, 1853, as follows, namely:

N. Y., *April* 16, 1853.

MR. KENDALL:

DEAR SIR: Please send us 20,000 gross of New England and Wilson's G. P. screws as soon as possible after having completed

our old orders, and the more recent of Feb'y 10th, the same to be charged at the very lowest prices you are selling it at the time of delivery, and memorandum of sizes to be given by us when you require it.

Please advise us how many thousand gro. of screws are now on the way for us; we have but 3 sizes on hand, and have a hundred orders to fill.

Yours, truly,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the defendants then read in evidence a letter marked No. 6, dated 19 April, 1853, from the plaintiffs to the defendants, as follows, namely:

PROVIDENCE, *April* 19, 1853.

BLIVEN & MEAD, *New York.*

GENT: Your esteemed favor of the 16th inst. is received. We will enter your order for 20,000 gross, to be taken up in its turn and filled as well as we may be able at the time, consistently with our obligations to our other customers, and at our current rates of discount at date of invoice. Our new mill will be in operation the coming autumn, which will enable us to supply our friends promptly and fully.

Yours, truly,

NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

The cross-examination of the witness, Jonathan L. Slocum, was then continued, as follows: I have no knowledge that any notice of the change in the rate of discount on the first quality of screws was given to the defendants; as far as I know, all the communications between the plaintiffs and the defendants were by writing; there were no letters and no correspondence between them from the 30th Sept., 1852, to the 17th Feb'y, 1853, other than the letters which have been produced and read upon this trial. I have no recollection of any personal interview between the parties between the last two mentioned dates; the books of the plaintiffs contain the original entries of the four items specified in the statement referred to in the defendants' letter dated 19 May, 1853.

The bill rendered to the defendants for $1,990 01, was made out by the plaintiffs, and was sent to the defendants, but whether in a blank envelope, or in a letter accompanying it, I cannot say; the bill rendered was retained by the defendants, and it is the account referred to by them in their letter of 19 May; the bill rendered was not dated, but it was made out and sent to the defendants about the middle of May, 1853.

I suppose the defendants' order of the 30th Sept., 1852, has never been filled to this day; the quantity of screws specified in that order have never been delivered by the plaintiffs; it would have been different from any other case if it had been; I have not now the means of stating what part of that order remains unexecuted.

The order of the 15 Oct., 1852, has never been executed by the plaintiffs to this day. I am unable to state from recollection what part or proportion of that order has been delivered by the plaintiffs; the books of the company show what part of that order has been executed.

The order of the 4th Nov., 1852, has never been executed by the plaintiffs; they have delivered a part only of the quantity ordered. I am unable to state what part or proportion of that order has been fulfilled; the books of the company show in this instance, as in every other case, what screws have been delivered under each order.

The order of the 17th Nov., 1852, has never been executed by the plaintiffs; they have delivered a part of the screws; I am not able to say what part or portion of the screws have been delivered.

The plaintiffs have not executed the two last orders, dated respectively the 17th Feb'y and the 16th April, 1853. They have not delivered any part or portion of the screws specified in either of these orders.

The counsel for the plaintiffs then produced and read in evidence a letter from the defendants to the plaintiffs, dated the 3d Sept., 1852, as follows, namely :

NEW YORK, *Sept.* 3, 1852.

Mr. :

DEAR SIR: Why the deuce don't you send us screws ordered long since? Not a week passes but we hear of your taking and executing orders from some one of our customers. This you have given us long since to understand was your rule of business ; but what we now complain of is the precedence given to such orders, particularly the first order from such parties.

Resp'y yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

The counsel for the plaintiffs then produced and read in evidence a letter from the plaintiffs to the defendants, dated 4th Sept., 1852, as follows, namely :

PROVIDENCE, *Sept.* 4, 1852.

BLIVEN & MEAD, *New York:*

GENTS: Yours of the 3d inst. is at hand. Your order of Aug. 18th came duly to hand and was entered to be taken up in course. If, however, you wish us to send what we can now, without wait-

ing its turn, we will do so. We are not aware that we have given any cause for the complaint you make, namely, that we fill orders of new customers before we do those of old friends. Perhaps we may in some case, though the writer does not recollect any. Have put up for some party a few sizes of such as we had plenty and do have plenty of, all the time. This we should do for any customer who might wish it; but orders embracing a range of sizes we invariably take up in turn, and fill as far as possible. We shall in every case serve you to the best of our ability, giving no orders precedence over yours.

Yours, truly,

NEW ENGLAND SCREW CO.,
H. L. KENDALL, *Ag't.*
By JONA. L. SLOCUM.

Jonathan L. Slocum being further examined by the counsel for the plaintiffs, testified, in substance, as follows:

I have calculated interest upon the sum of $1,990 01 dollars. It amounts to $225 20, which added to the principal, makes a total of $2,215 $\frac{21}{100}$.

The witness further testified: The orders were taken up in their turn, and were filled in proportion to the orders as we made the screws and could deliver them. We had from five hundred to six hundred customers.

This evidence was in due season objected to by the defendants as being irrelevant and immaterial, but the court overruled the objection, and did decide that it was admissible; to which ruling and decision the counsel for the defendants did then and there except.

The production of small screws was small in proportion to the medium size. Some of the defendants' orders ran very heavily on the small sizes, calling for an undue proportion of them. I refer particularly to the order of the 10th Oct. The item in the bill rendered of $340 $\frac{89}{100}$ charged under date of 3d Feb'y, 1853, was for screws delivered under the order of 17th Nov'r, 1853. The defendants had been customers of the plaintiffs for several years.

We had taken up their orders and had delivered to them part only of the whole quantity so far as we were able. We had never executed any of their general orders in full. It would not have been possible for us to have delivered to him all their orders in full and also to have served our other customers. The usage of the plaintiffs with their customers when orders were given to and accepted by them without any mention of prices, was to charge at the rates ruling at the time of the delivery, and if in the interval between the receipt of the orders and the delivery the discount had increased, the buyers had the benefit of the allowance; and if prices had increased and the discount off was less, the buyer paid according to the increased price.

The testimony, from the words "the usage of the plaintiffs," was in due season objected to by the counsel for the defendants as inadmissible, on the ground that it was irrelevant and immaterial; but the court overruled the objection and admitted the evidence, to which ruling and decision the counsel for the defendants did then and there except.

The Wilson's screws are those which are separated from the others as being less perfect. They are inferior screws.

Being further cross-examined, he testified that those customers who had not been notified of the reservation on the part of the plaintiffs to increase their price, if at the time of delivery the rates had gone up, would have had their orders supplied at the old rates. It was not the practice of the plaintiffs to deliver screws by instruments upon the orders.

When we thought the markets would rise we usually notified our customers when their orders were accepted that we should charge them at the rates ruling at the time of delivery. We had orders for six months and a year in advance of our productions. Without such notice they would have expected to be charged at the old prices. By old prices I mean the price existing at the time of the order. When we sent to the defendants the screws charged under date of 9th Feb'y we did not accompany them with any communication. We gave no notice to the defendants that any of the screws delivered were applicable to the order of the 17th November. I cannot give the sizes or the description of the screws charged in the item of $340 $\frac{89}{100}$.

They may or may not have answered to the sizes and descriptions contained in the prior order. After having accepted the different order of the defendants, we continued taking orders from our other customers as they were given, but we declined to take orders from new parties. The prices of screws under the order of 17th November were higher than the prices we could have charged, if we had delivered them under the defendants' prior orders. The prices under the order the 17th Nov. were ten per cent. higher than those under the prior orders; the company did not fill orders for others in precedence to orders of defendants.

The counsel for the plaintiffs here rested his case.

The counsel for the plaintiffs then produced upon notice, and delivered to the counsel for the defendants, a letter from the defendants to the plaintiff, bearing date the 30th Sept., 1853, marked H, which letter was read in evidence on the part of the defendants, as follows, namely:

NEW YORK, *Sept.* 30, 1853.

Mr. H. L. KENDALL,
Ag't New England Screw Co.

DEAR SIR: Not having yet received any screws from you since June 23d, when we called your attention to our orders, we now

take up your invoices of screws, and apply them on our orders, as you say they were intended by you to be applied, and find the following G. P. screws still due us, on our order of Sept. 30, 1852, accepted by your letter of Oct. 7, 1852.

⅜. 300, 490, 500, 260, 200, ½, 260, 450, 300, 220, 80, 50, 20.
2 3 4 5 6 2 3 4 5 6 7 8

⅝. 100, 210, 450, 390, 240, 10, ¾, 40, 290, 400, 30, 170, 80, 30.
4 5 6 7 8 9 5 6 8 10 11 12 13.

1. 70, 130, 250, 20, 30, 80, 1¼, 20, 90, 40, 10, ⅞, 50, 20.
6 7 8 9 13 14 8 15 16 18 7 12.

1½. 50, 65, 40, 40, 1¾, 30, 40, 60, 45, 15, 2, 40, 20, 25.
11 15 16 17 14 15 16 17 18 15 16 18.

2. 30, 10, 2½, 25, 32, 22, 10, 6, 3, 15, 20, 10, 73.
19 20 16 18 19 20 22 18 19 21 22.

3½. 2.
22.

These we hereby require you to deliver to us, either of Wilson's or New England screws, at the discount of 55 per cent. for Wilson's, 50 per cent. for New England, which was the discount at the time the order was accepted. The gross amount of the order at list prices was $4,182 95; gross amount received of the sizes ordered, was $1,517 65; and of surplus sent of ⅜, ⅚, ⅒, and ⅞, ⅒, is $54 30; leaving a gross amount of $2,611 26 due to us. This we claim in screws of any salable sizes, or the difference between the present New York selling prices and the factory prices of Sept. 30, 1852. There is also due us, on our order of October 15, 1852, which was accepted by your letter of Oct. 16—

⅜. 80, 180, 150, 40, 10, ½, 40, 260, 120, 40, 10, 10, ⅜, 30, 270,
2 3 4 5 6 2 3 4 5 6 7 5 6
150, 180, 30.
7 8 9.

¾. 10, 70, 20, 150, 20, 200, 140, 140, 1, 160, 230, 50, 200, 100,
5 6 7 8 9 10 11 12 6 7 8 10 11
20, 50.
14 15.

1¼. 60, 130, 10, 95, 75, 25, 50, ½, 30, 50, 70, 50, 70, 50, 5.
8 12 13 14 15 16 17 11 12 14 15 16 17 18.

2. 10, 45, 45, 60, 50, 45, 30, 10, 2½, 10, 5, 20, 10, 15, 20.
12 13 14 15 16 17 18 19 14 15 16 17 18 19.

3. 16, 12, 7, 30, 17, 20, 6, 20, 10, 3½, 4, 10, 7, 4, 5, 5, gro.
16 17 18 19 20 21 22 23 24 20 22 24 22 24.

These we require you hereby to deliver to us, either of Wilson's screws at 55 per cent., or New England at 50 per cent. discount

from the list prices, to be delivered of the sizes as above, or in equal amount in any regular and salable sizes you make. The gross amount of the order at list prices is \$5,723 $\frac{80}{100}$; the gross amount received on the same is \$3,472 63; leaving a balance still due us, gross amount, \$2,251 17; this we claim in screws as aforesaid, or the difference between the present New York price and the contract price.

There is also due us on our order of Nov. 4, 1852, which was accepted by your letter to us, of Nov. 6, 1852—

Wilson's Screws.

$\frac{1}{2}$. 80, 160, $\frac{5}{8}$, 80, 180, 200, 100, 50, $\frac{3}{4}$, 50, 200, 200, 140, 60, 20.
2 3 4 5 6 7 8 5 6 8 10 11 12.

1. 90, 180, 100, 100, 150, 50, 20, 50, $1\frac{1}{4}$, 50, 200, 100, 120, 100,
6 7 8 9 11 13 14 15 8 10 11 12 13
95, 45, 50.
15 16 17.

$1\frac{1}{2}$. 70, 100, 140, 150, 140, 95, 50, 45, $1\frac{3}{4}$, 30, 30, 40, 25, 30, 30,
10 11 12 13 15 16 17 18 14 15 16 17 18 19
30.
20.

2. 20, 40, 50, 90, 100, 45, 40, gro.
12 13 14 15 16 17 18.

Which we hereby demand you to deliver as per contract. The gross amount of the order is \$4,427 $\frac{50}{100}$; the gross amount received per your invoice of Jan'y 7th is \$2,130 50; leaving a balance due us, on our order of Nov. 17, 1852, and accepted by your letter of Nov. 19th, 1852.

$\frac{3}{8}$. 10, 15, 10, 30, $\frac{1}{2}$, 5, 10, 10, $\frac{5}{8}$, 40, 20, 10, 20, 60, $\frac{3}{4}$, 5, 20, 10.
2 3 4 5 2 3 6 4 5 6 7 8 5 10 12.

1. 10, 10, 10, 5, $1\frac{1}{2}$, 10, 5, 5, 5, $1\frac{3}{4}$, 5, 2, 10, 10, 5, 5.
6 7 8 17 8 16 17 19 12 11 16 18 19.

$2\frac{1}{2}$. 5, 3, 2, 2, 3, 3, 60, $3\frac{1}{2}$, 2.
12 13 16 18 19 22 19.

Which we hereby require to be delivered as per agreement, or we shall hold you for the difference between the present factory price and the selling price in New York. The gross amount of the order is 903 46 dolls.; the amount received, including screws sent over the quantities of same sizes ordered, is \$603 $\frac{89}{100}$, leaving a balance at gross prices of 299 $\frac{57}{100}$ dollars.

You have our order dated Feb'y 10, 1853, for 10,000 gro. New England screws, and 10,000 gro. Wilson's screws, which was accepted by your letter of Feb'y 17. These we hereby demand to be sent to us on terms and conditions of said letter of acceptance, and in sizes proportioned as you usually make them, or as per the following memorandum:

⅜. 50, 100, 50, 30, 20, ½, 30, 100, 100, 50, 40, 20, ⅝, 50, 200,
2 3 4 5 6 2 3 4 5 6 7 4 5

300, 300, 220.
6 7 8.

⅝. 100, 50, ¾, 20, 400, 600, 1100, 800, 600, 400, 200, 100,
9 10 5 6 7 8 9 10 11 12 13

1. 400, 600, 800, 1000, 1200.
6 7 8 9 10.

1. 800, 400, 200, 100, 100, 1¼, 200, 400, 600, 600, 600, 400,
11 12 13 14 15 8 9 10 11 12 13

400, 200, 100, 10.
14 15 16 17.

½. 200, 400, 600, 600, 400, 200, 200, 100, 40, 2, 40, 40, 100,
10 11 12 13 14 15 16 17 18 10 11 12

200, 200, 200, 200.
13 14 15 16.

2. 100, 100, 20, 20, 2½, 40, 40, 60, 60, 60, 40, 20, 3½, 20, 20,
17 18 19 20 14 15 16 17 18 19 20 18 20

20, 20.
22 24.

3. 40, 40, 40, 60, 60, 40, 100, 40, 60, 4, 10, 10.
16 17 18 19 20 21 22 23 24 22 24.

20,000 gross.

You have also our order dated April 16, 1853, for 20,000 gro. New England and Wilson's screws, which were accepted by your letter to us of the 19th of April; these we hereby demand to be sent to us on terms and conditions of said letter of acceptance, and in proportion of sizes as you usually make them, or as per memorandum above, per our order of Feb'y 10th.

These orders of Feb'y 10th and 16th, if not filled immediately, or in their turn, as agreed, will render you liable to us for damage to us in consequence of our not having these desirable goods for our usual trade, also for the difference between the factory price and the usual New York market price; and we hereby notify you that we hold you for such damage. We notify you that on the completion of any and all of the orders herein named we are ready on our part to fulfil our obligations for the same; and although, in your letter of Nov 6, you waived immediate or cash payment, are willing, if you require it, to give security to pay the bills at maturity. In applying the invoices received to the orders, as you claim they should be, and as we have herein, we pass to your credit, without any reduction, the full amount of your invoice of Jan'y 7th last.

Respectfully, yours,

BLIVEN & MEAD.

The counsel for the plaintiffs then produced upon notice, and delivered to the counsel for the defendants, a letter from the defendants to the plaintiffs bearing date the 30th Sept., 1853, which was read in evidence on the part of the defendants as follows:

NEW YORK, *Sept.* 30, 1853.

Mr. H. L. KENDALL,
Agt. New England Screw Co.

SIR: We enclose herewith our notes drawn at six months, dated Sept. 30, 1853, for 1,305$\frac{63}{100}$ dollars, which we tender in payment for the balance due on our order of Sept. 30, 1853.

The gross amount of said order at the list prices is $4,182 91, from which deduct the amount of your invoice of Nov. 19, 1852, gross amount $1,571 65, will leave a balance due us, gross am't, $2,611 26, which, at the discount for New England screws, will leave a net balance due us of 1,305 63 dollars.

We enclose our note at 6 months, dated June 14, 1853, for 2,718$\frac{81}{100}$ dollars, which we tender in payment for the balance due us on our order of screws dated Oct. 15, 1853, and for the amount received on the same, as follows:

The net amount for New England screws, at 50 per cent. discount, is		$1,430 95
The net am't of Wilson's screws, at 55 per cent. disc't...		1,287 86
We received your invoice of Wilson screws, March 17, 1853	$351 05	
We received your invoice of Wilson's screws, Ap'l 23, 1853	450 79	
		801 84
Leaves a balance due us this day in Wilson screws		486 02
We rec'd your invoice of March 17, 1853, for N. E. screws		489 56
We rec'd your invoice of April 23, 1853, for N. E. screws		357 72
		847 28
		583 67
Add to this 10 gro. over in invoice		1 90
		585 57

We enclose our note at 6 months, date Sept. 30, 1853, for 1,033$\frac{66}{100}$ dolls., in payment for the balance due

on our order for Wilson's screws, dated Nov. 4, 1852, the net am't of which, at 55 per cent., is.....	$1,992 38
Rec'd by your invoice of Jan'y 17, 1853.....	958 72
Balance due us on Wilson's screws, net amount.....	1,033 66
We enclose our note at 6 months, dated April 30, 1853, for $520 63, in payment for the amount of our order of Nov. 17, 1853, which, at the list prices, amounts to, gross amount.....	903 46
Deduct the gross am't of your invoice, Feb. 9, 1853.....	603 89
Will leave a balance due, gross am't.....	299 57
Which at 40 per cent. discount, is.....	179 74
Add the net am't received Feb. 9, 1853.....	340 89
Average due, 6 months from April 30th.....	520 63

We enclose our note at 6 months, dated April 30th, 1853, for $6,002\frac{49}{100}$ dolls., in payment for screws due as per our order of Feb. 10, 1852, as follows: Gross amount of our order at regular list is $10,439\frac{10}{100}$ dolls., half of which is for New England screws, at 40 per cent. discount is $3,131 73; and the balance for Wilson's screws is $2,870 76—$6,002 49 net amount due.

We enclose our note at 6 months, dated Sept. 30, 1853, for 6,263 46 dolls., in payment for screws due on our order of April 19, 1853; the gross amount of the order, as per memorandum now given, is 10,439 10 dolls., which at 40 per cent. disc't, is 6,263 46 dolls.

These several notes we hereby tender in payment, and demand the screws as per our several orders.

Respectfully, yours,

BLIVEN & MEAD.

Archibald Y. Paddock was then sworn as a witness on the part of the defendants, who testified, in substance, as follows:

I reside in Brooklyn, and am employed in a dry goods jobbing house in the city of New York; I was in the employment of the defendants on and previous to the 30th Sept., 1853. I left New York on the last mentioned day and went to Providence by the request of the defendants; I took with me the two letters, bearing date the 30th Sept., 1853, just read to the jury, and also the several promissory notes referred to in the letters last read. I delivered the two letters to Mr. Kendall, and also tendered to him the notes, and in the name and on the behalf of the defendants demanded the screws that had not been delivered to the defendants, in fulfilment of their orders. The plaintiffs did not deliver the

screws so demanded, or any of them. Mr. Kendall went on to explain why they could not deliver them; but the result of the conversation was, he declined to deliver them to the defendants.

John G. Bogart was then sworn as a witness on the part of the defendants, and he testified that he is one of the firm of Mead, Sprague & Co., of No. 97 Pearl st., hardware merchants, between the 30th Sept., 1852, and the 30th Sept., 1853; my firm had dealings with the plaintiffs; between those dates we ordered screws of them, which they delivered. It is impossible for me to recollect the amount of the orders or the amount of screws delivered to us; I cannot *approtinate* to the amount. It was not less than $1,000, and may have amounted to over $5,000. Our orders were filled, upon an average, in from 2 to 3 months.

Peter Duryea, being called by the defendants and sworn as a witness, testified, in substance:

I am a hardware merchant. Between the 30th September, 1852, and the 30th Sept., 1853, the plaintiffs delivered to me a limited quantity only of screws ordered; I ordered the screws on the 19th Feb., 1853, and part of them were delivered on the 9th July, 1853, and they delivered a part of the screws on the 18th Feb., 1854. These were all Wilson's screws.

Samuel W. Sears, being called as a witness by the defendants and sworn, testified, in substance, as follows:

I am of the firm of Sears, Adriance & Platt, merchants in hardware. Between the 30th Sept., 1852, and the 30th Sept., 1853, the plaintiffs took from us different orders for screws; they delivered in from three to six months after the orders were given; we received during that time screws to the amount of about $10,000 gross.

Being cross-examined: They delivered part only of the various quantities ordered.

Cornelius Oakley, jr., being called by the defendants and sworn as a witness, testified, in substance, as follows:

I am of the firm of Oakley, Fot & Co. The plaintiffs took from us two orders for screws, between the 30th September, 1852, and the 30th Sept., 1853; on the 3d Nov., 1852, we gave them an order for 3,400 gross, payable at the prices ruling at the time of delivery, and received on that order only 1,900 gross, in the spring of 1853. In October, 1853, we gave another order, but smaller, on which 50 per cent. only of the quantity ordered and received, and this in August, 1854.

John O. Tucker, being called by the defendants and sworn as a witness, testifies, that between the 30th September, 1852, and the 30th September, 1853, he gave the plaintiffs orders for screws, which they accepted.

Being cross-examined, says, that the screws were delivered in

about six months from the date of the orders; only portions of the screws ordered were delivered.

The deposition of witnesses, taken under a commission issued by the defendants, were then read as follows, namely:

I, William Whitaker, of the city of Providence, in the State of Rhode Island, hardware merchant, aged 40 years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First question by Geo. W. Wright, esq., for Bliven & Mead. Of what firm was you a member from the 30th September, 1852, to the 30 Sept., 1853?

Ans. Barker, Whitaker & Co., of Providence.

2d ques. What was the nature of their business, and where did they carry it on?

Ans. Selling hardware in this city.

3d ques. During that time did they make frequent purchases of screws from the New England Screw Co. ?

Ans. We did.

4 ques. Were your orders to them either verbal or written?

Ans. Generally written. I could not say they were always written, but orders for any quantity were always written.

5 ques. How long after the giving of the orders were they generally filled?

Ans. Generally from one to three or four days; that might be qualified, I suppose—perhaps sometimes longer.

6th ques. Can you state the amount, or near the amount, of your purchases from the 30th of Sept., 1852, to the 30th Sept., 1853, of the New England Screw Co. ?

Ans. I cannot, with certainty, without recourse to our books, not having examined into the matter—I should say from two to four thousand dollars.

7 ques. Can you state what sizes of screws were so purchased by you?

Ans. We purchased a general assortment of sizes usually wanted in trade, as far as we could obtain them.

8th ques. Have you the invoices of the goods so purchased by you, or what was your manner of purchasing?

Ans. We sent our orders with the pass-books, and the portion of the screws, or whatever screws, they sent on that order were put on the pass-book, and sent us with the pass-book. Our settlements were made once a quarter, by a general bill *taking* from the footings of said pass-book; we took no other invoices.

Mr. H. L. Kendall, on behalf of the N. E. Screw Co., declined to cross-examine the witness, and it was agreed by the counsel for

4742

Bliven & Mead and Mr. Kendall, that if the counsel for the New England Screw Company wished, after this deposition was closed, to ask the witness anything, he should be at liberty to do so, in the absence of the counsel for Bliven & Mead, on written interrogatories, which shall be first submitted to the counsel of Bliven & Mead.

WM. WHITAKER, JR.

Examination *taking*, reduced to writing, and by the witness subscribed and sworn to this 24th day of March, A. D. 1855, before

JOSEPH S. PITMAN,
Commissioner.

Cross examination, March 26, 1855.

First question by T. A. Jencks, esq., for the New England Screw Co. Did you always get all the sizes that you sent for, and as many of all the sizes that you sent for?

Ans. We did not.

2d ques. Was there any reason given by the agent of the New England Screw Co. for not furnishing all that you wanted, of all sizes that you wanted? and if so, please state the reason.

Ans. It was understood by us that the demand for small sizes was larger than the supply; and, therefore, in order to obtain our supply, we had recourse to the plan of ordering in small quantities and often, and then we seldom got as many as we wanted at the time. It is my impression, that sometimes in urgent cases we obtained all we wanted for a particular order, by going several different times for them, we always representing that we being here on the spot, were entitled to them in preference to the trade from abroad.

3d ques. How long have you been in the custom of sending to the factory for screws in the manner you have stated?

Ans. I can't say definitely—for some time prior to 1852.

4th ques. How long have you purchased your screws direct from the factory?

Ans. Ever since Mr. Hodges was agent, and for some time previous, nearly ever since they made screws; we always brought them direct from the factory.

WM. WHITAKER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 26th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, Nathaniel A. Eddy, of the city of Providence, in the State of Rhode Island, hardware merchant, aged 39 years and upwards, being duly and publicly sworn to state the truth, the whole truth,

and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

1st question by G. W. Wright, esq., for Bliven & Mead. What was your business from the 30th Sept., 1852, to the 30th Sept., 1853, and where did you carry it on?

Ans. General hardware business, in Broad st., Providence.

2 ques. During that time did you make frequent purchases of screws from the New England Screw Co.?

Ans. I did.

3 ques. Were your orders to them verbal or written?

Ans. It was seldom I sent a written order; it was generally a memorandum of sizes written out; I either went myself or sent some one in my employ.

3d ques. How long after the giving of the orders were they generally filled?

Ans. Well, some portion of them were filled in a day or two, and some portion of them were from six or nine months.

4th ques. Can you state the amount or near the amount of your purchases from the New England Screw Co. from the 30 of Sept., 1852, to the 30th of Sept., 1853?

Ans. I should think from two to three thousand dollars.

5th ques. Can you state what sizes of screws were so purchased by you?

Ans. All sizes; a variety of sizes.

6th ques. Have you the invoices of the goods, or what was your manner of purchasing?

Ans. I have some bills of screws, and have also a pass-book, on which one kind of screws was always entered; that kind was those marked New England Screw Co., common thread wood-screws.

Cross-examination.

1st question by T. A. Jencks, esq., for the New England Screw Co. Did you always get all of the sizes that you sent for, and as many of the sizes that you sent for?

Ans. No, never, during that year.

NATH'L A. EDDY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 24th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN.

I, John C. Mather, of the city of Providence, in the State of Rhode Island, clerk and book-keeper for Joseph Belcher, aged 24 years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First question by Geo. W. Wright, esq., for Bliven & Mead. In what employment was you from 30 Sept., 1852, to the 30th of September, 1853, and what capacity?

Ans. In the employment of Joseph Belcher, as clerk and book-keeper.

2d ques. What was Mr. Belcher's business; where did he carry it on?

Ans. General hardware business, at 121 and 123 Broad st., Providence, R. Island.

3d ques. During that time did he make frequent purchases of screws from the New England Screw Co.?

Ans. He did.

4th ques. Were his orders to the New England Screw Co. verbal, or written?

Ans. Both verbal and written. I might add that we seldom at that time made orders, but memorandums merely, without addressing any particular party—for screws, of course, is implied.

5th ques. How long after the giving of the orders were they generally filled?

Ans. Well, sizes that they had on hand and would spare, we used to take with us; for the others, we used to call for them in a few days, at our convenience, when they could spare them.

Sixth ques. Can you state at about the amount of Mr. Belcher's purchases of screws of the New England Screw Company from the 30th of Sept., 1852, to the 30th of Sept., 1853?

Ans. I should think between one and two thousand dollars; I should think, without examining the books.

7th ques. Can you state what sizes of screws were so purchased by Mr. Belcher?

Ans. We were in the habit of buying nearly all of the sizes, or all of the medium sizes; I don't suppose we ever bought any six-inch screws, but the medium sizes are intended; some of our customers required certain sizes, and we used to buy those sizes specially for them; there were some blind-makers whom we used to buy a good many for; generally we bought an assortment of screws to fill up our shelves—screws for common building purposes.

8th ques. In buying to fill up your shelves, what sizes did you purchase?

Ans. Usually from 2-inch down to an half inch.

9th ques. Had you invoices of the goods so purchased, or what was your manner of purchasing?

Ans. The first quality were usually entered upon a pass-book; the second quality upon bill-heads.

Cross-examination.

First ques. by T. A. Jencks, esq., for the New England Screw Co. Did you always get all the sizes that you sent for, and as many of all the sizes that you sent for?

Ans. Not usually, but generally, on account of our orders being small.

2d question. How many gross did you usually send for at a time?

Ans. About that time we used to send for from, say, from 20 to 40 gross; and at other times from one to two hundred gross, and frequently for single grosses of large size.

J. C. MATHER.

Examination reduced to writing, and by the witness subscribed and sworn to this 26th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, William T. Grinnell, of the city of Providence, in the State of Rhode Island, aged 25 years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First ques. by George W. Wright, esq., for Bliven & Mead. What was your business from the 30th of Sept., 1852, to the 30th Sept., 1853, and where did you carry it on?

Ans. Hardware, in Providence.

2d ques. During that time did you make frequent purchases of screws from the New England Screw Co.?

Ans. Almost daily. The bills were rendered quarterly.

3d ques. Of what firm was you a member during that period?

Ans. P. Grinnell & Sons.

4th ques. Were your orders to the New England Screw Company verbal or written?

Ans. Verbal orders, with a memorandum of sizes, the memorandum sometimes written and sometimes not. I don't think we ever gave more than 4 or 5 of what could be called written orders; those were for particular sales. For our own use, for general sales, I think we hardly ever did such a thing.

5th ques. How long after giving the orders were they generally filled during that period?

Ans. From an half an hour to never; sometimes they were never filled; they were entirely irregular; sometimes we would get part of our order, and consider the order finished; and if the same things or sizes were wanted, the order would be renewed. I am confining my answer to the common wood-screws, made in the

general course of their business. They also made for us a particular kind of screws, a fine-thread machine screw, at very different discounts, and upon special order.

6th ques. Please state, as near as you are able, the amount of your purchases of the common wood-screw from the New England Screw Company, from the 30th of September, 1852, to the 30th of September, 1853.

Ans. I can't from these papers state; I think about twelve hundred dollars.

7th ques. Can you state what sizes of screws were so purchased by you?

Ans. A general assortment; I can't state definitely without reference to the pass-book.

8th ques. Are the common wood-screws made of wood or iron?

Ans. Of iron or of brass.

9th ques. Is a wood-screw so called because it is to be used to go into wood?

Ans. It is.

Cross-examination.

1st question by T. A. Jenckes, esq., for the New England Screw Company. How long has it been your custom to purchase screws directly from the factory?

Ans. Almost from the first establishment of the company. When they were in Canal st., we purchased of them more than 10 years.

2 ques. What proportion did the pattern screws or machine screws you refer to bear to the rest of your purchases, during the period referred to?

Ans. I think less than ten per cent.

3d ques. Were you not sometimes during said period unable to get the screws you sent for from the factory?

Ans. Very often unable to get anything.

W. T. GRINNELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 26th day of March, A. D. 1856, before me.

JOSEPH S. PITMAN,
Commissioner.

I, James Tiffany, of the city of Providence, in the State of Rhode Island, aged twenty-five years and upwards, being duly and publicly sworn to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed to me, and examined on the part of Bliven & Mead, doth depose and say as follows:

First ques., by Geo. W. Wright, esq., for Bliven & Mead. Of what firm was you a member from the 30th Sept., 1852, to the 30th Sept., 1853?

Ans. Gardner & Tiffany.

2d ques. What was the nature of their business, and where did they carry it on?

Ans. Hardware; in Broad st., in this city,

3d ques. During that time did your firm make frequent purchases of screws from the New England Screw Company?

Ans. Yes, we did.

4th ques. Were your orders to them verbal or written?

Ans. Generally verbal, and I don't know but altogether so.

5th ques. How long after giving the orders were they generally filled?

Ans. They were not generally filled, but they were partly filled, in most cases, and I guess all, in anywhere from one day to a week.

6th ques. Can you state the amount, or near the amount, of your purchases from the New England Screw Company from the 30th Sept., 1852, to the 30th Sept., 1853?

Ans. I cannot tell the amount. I could not tell anything near the amount without referring to books. I could tell near the amount by that.

7th ques. Can you state what sizes of screws were so purchased by you?

Ans. I should think they were mostly sizes over inch, as near as I can recollect.

8th ques. Did you purchase general assortment of sizes?

Ans. Yes; we had a general assortment, though but a few of the small sizes; not so many as we ordered.

9th ques. Will you refer to your books, and state as nearly as you can about the amount of your purchases between the 30th Sept., 1852, and the 30th Sept., 1853?

Ans. It will not be convenient to do so, as it will require the examination of old books.

JAMES TIFFANY.

Examination taken, reduced to writing, and by the witness subscribed and sworn, this 28th day of March, A. D. 1855, before me.

JOSEPH S. PITMAN,
Commissioner.

I, Caleb Congdon, of the city of Providence, in the State of Rhode Island, aged 28 years and upwards, being duly and publicly affirmed to state the truth, the whole truth, and nothing but the truth, in answer to the interrogatories which shall be proposed and examined on the part of Bliven & Meade, doth depose and say as follows:

First ques., by G. W. Wright, esq., for Bliven & Meade. Of what firm was you a member from the 30th Sept., 1852, to the 30th Sept., 1853?

Ans. I was in the employ of J. Congdon & Son.

Second ques. In what capacity?

Ans. As clerk.

3d ques. What was the nature of their business, and where did they carry it on?

Ans. Hardware business; at 7 Steeple st., city of Providence.

4th ques. During that time did they make frequent purchases of screws from the New England Screw Company?

Ans. I should say that we did.

5th ques. Were your orders to them verbal or written?

Ans. Partly written and partly verbal.

6th ques. How long after giving the orders were they generally filled?

Ans. From one to four days; that is, the orders were not filled. Whenever we gave an order it was seldom filled. They sent us what they could furnish, and in from one to four days.

7th ques. Please state as nearly as you are able the amount of your purchases from the 30th of Sept., 1852, to the 30th Sept., 1853.

Ans. Between 350 and 400 dollars between those dates.

8th ques. Can you state what sizes of screws were so purchased by you?

Ans. I cannot.

9th ques. Did you so purchase general assortment of sizes?

Ans. The orders were for sizes to complete our assortment.

CALEB CONGDON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 26th day of March, A. D. 1855.

JOSEPH S. PITMAN,
Commissioner.

The counsel for the defendants then put in evidence and read to the jury a circular issued by the plaintiffs, bearing date the 1st of January, 1853, in the words following, namely:

OFFICE OF NEW ENGLAND SCREW CO.,
Providence, Jan'y 1st, 1853.

Messrs. BLIVEN & MEAD:

GENT: In consequence of the great advance in the price of iron and other materials used in the manufacture of screws, our discounts on and after this date will be as follows, viz:

Premium gimlet, iron and brass	40	pr. cent.
Wilson's do. do.	45	"
Bright and blue ro. heads	30	"

Yours, resp'ly,
NEW ENGLAND SCREW CO.
H. L. KENDALL, *Ag't.*

The counsel for the defendants here rested the case.

The counsel for the plaintiffs then produced and read the foregoing letter from the plaintiffs to the defendants dated 13 Oct., 1853, namely:

PROVIDENCE, *Oct.* 13, 1853.

Messrs. BLIVEN & MEAD, *New York:*

GENT: As there has been much done, both by writing and otherwise, in relation to the matter in dispute between us, the present is to say that we know of no reason why your business with us should not be conducted in the same manner as with all our other customers; but should you think otherwise it will be best to have our business relations brought to a close at once. There cannot be a clearer case of right than ours, not only by an universal custom of filling orders, but also by the conditions as specified from time to time though our whole correspondence with you; for instance, as far back as March 11, 1852, we say we shall not be able to furnish but a small part of the small sizes ordered. Oct. 16, 1852, we say we write, in accepting your orders it must be understood that we furnish the sizes in the proportions we make them. Nov. 6, 1852, in accepting your order for Wilson's screws, we say they are with us an incidental product, and the supply limited and somewhat variable, and in taking orders for them it is understood that we fill as far as we may be able at the time. Feb'y 17, 1853, we say your order will be entered, taken up in course, and filled as far as we may be able at that time. April 19, 1853, we write, we will enter your order for twenty thousand gross, to be taken up in its turn and filled as well as we may be able at the time, consistently with our obligations to other customers.

And comment upon the above we think unnecessary. We would say in conclusion, if you remit us the amount of our ac't, now overdue, at once, we will take up your orders in turn, and fill them as far as we may be able, and shall be happy to continue to do business with you, placing you, as we always have done, among our first-class customers; but if you shall elect otherwise we shall certainly be under the necessity of requiring you to pay us the amount due us without any further delay.

Resp'y, yours,
NEW ENGLAND SCREW CO.
H. L. KENDALL, *Ag't.*

Jonathan L. Slocum was then recalled by the counsel for the plaintiff and testified in substance as follows, namely:

When we filled orders partially we were in the practice of sending in our bills for the screws delivered. Don't know of an instance between Sept., 1852, and Sept., 1853, except of the partial filling of orders; the bills for this were always sent and were uniformly paid by defendants and others. This was our custom.

This evidence was in due season objected to by the counsel for the defendants as inadmissible, because irrelevant and immaterial; but the objection was overruled by his honor, the justice, who decided that the matter aforesaid should be given in evidence. To which opinion and decision of his honor, the justice, the counsel for the defendants did then and there except.

Being cross-examined the witness testified as follows: I cannot say what knowledge the defendants had of how we transacted business with our other customers.

The counsel for Bliven & Mead then read in evidence a letter from the defendants to the plaintiffs, bearing date the 7th of September, 1853, in words and figures following, viz:

NEW YORK, *Sept.* 7, 1853.

Mr. H. L. KENDALL, Ag't New England Screw Co.

DEAR SIR: Your letter of the 2d inst. is at hand, in which you say our order of the 16 of May will be reached in a few weeks, expressing a wish to know whether we will accept your draft for the amount of your statement, intimating that you will not execute our order of that date until we consent to accept the draft.

In reply we would say that our letter to you dated May 21st last, (to which we now refer you,) explains our views and covers the amount of our claim, only that we then refer to dates, without giving the numbers of gro. of screws, or the amount in figures we claim as our due, which, on your request, we will immediately furnish.

Your own good sense of right and law will enable you to know that you cannot collect the amount of your claim without deducting the overcharge, 60 $\frac{39}{100}$ dollars, on your bill of Feb'y 9th last, and until you fulfil you old contracts with us at old prices; our claim is unanswerable in equity. You do not, and cannot, advance a single argument in reason to sustain the position you have assumed in this matter. That you may fully understand the course our interest, on account of your non-fulfilment of your contract with us, has forced us to take, we would say that we will not accept the draft until this matter is amicably settled between us.

There is now a large lot of screws due us on our orders of last fall at old prices. You have our order of Feb'y 10th, for 20,000

gro., and our order of April 16, (not May 16,) for 20,000, none of which two last dates have we received. All of which, if sent immediately, we can sell at fair profits. Now we will accept and pay your draft for $1,929 $\frac{62}{100}$ doll's, at 6 months, from March 17 last, providing you will send us in place of all orders now due us, say 50,000 gross of Wilson's or New England gimlet screws, at the largest discount you are now selling at.

Requesting your early reply, we remain,

Respectfully, yours,

BLIVEN & MEAD.

The counsel for the defendants then read in evidence a letter from them to the New England Screw Co., bearing date the 21st May, 1853, as follows, namely:

NEW YORK, *May* 21, 1853.

MR. H. L. KENDALL:

DEAR SIR: Your letter of yesterday is at hand, in which you say, "having reached an order and filled it as far as possible, we consider it finished, and pass wholly from it."

We would say, we are perfectly astonished at this rule of business, and have never had any intimation of it before; have carefully examined all the circulars you have ever sent to us, and find no such terms. The thing is ridiculous. We give you an order, which is accepted at a fixed price; the contract being made, we, in our turn, sell the goods, to be delivered unconditionally, and always fill our orders, as every good merchant will, without regard to loss, bringing the memorandums forward until the orders are completed. If in this case it's a convenient rule for you, screws having advanced, it's not for us, and we shall remember former favors not rendered us, and hold you for every gro. of screws due us at old prices.

We refer you to our orders of Sept. 30th, and your acceptance of same Oct. 7; our order of October 15, your letter of acceptance Oct. 16; our order of Nov. 4th, your letter of acceptance Oct. 16; our order of Nov. 4, your letter of acceptance dated dated Nov. 6; our order of Nov. 17, your acceptance of the same, dated Nov. 19, which contains the first claim, "to be charged at whatever price they may be selling at the time of delivery."

We presume that when you have carefully read our orders, and the copies of your replies to us, you will concede the justice of our claim; be assured we shall insist upon the same, as it's a matter of much importance to us. You will, of course, not forward the draft for acceptance till we have an understanding. Our two more recent orders for 20,000 gro. each we expect on your terms, the market price only; we shall insist upon the execution of whole or-

der, except, perhaps, a portion of $\frac{3}{8}$ and $\frac{1}{2}$ in., which we suppose would trouble you to furnish.

Respectfully, yours,

BLIVEN & MEAD.

To the NEW ENGLAND SCREW CO.

Jonathan L. Slocum was recalled by the counsel for the plaintiffs, and testified that the sizes of the screws referred to in the order of the 15th Oct. are specified in the letter of that date.

I designate as small sizes No. 8, and below that number. The order of the 15th October contains 84 different sizes; I have counted the order. About 1,500 gross of small sizes were delivered under that order; we manufactured many less of the small than of the medium sizes. I think that there were about 5,000 gross of small sizes ordered by the defendants on the 15 October. We sent to them a full proportion of small sizes, compared with the proportions we usually sent to our other customers in orders containing the same number of large and leading sizes as this order had. It was in accordance with the proportions of small sizes manufactured by us compared with the large. Our machinery was arranged to make a proportion of small and large, and leading sizes, and that could only be varied by adding new machinery.

Being cross-examined, he stated the profits on the smaller sizes of screws were not as great as the larger.

The counsel for the defendants then produced the order of 15 Oct., and was about to call a witness to prove the number of small sizes contained in the order of the 15th Oct., when the counsel for the plaintiffs admitted that they amounted 3,750 gross, and no more.

It was further admitted by the counsel for the New England Screw Co., the plaintiffs, that the market value or price of screws had advanced after the dates of the respective orders. The parties here rested their case; whereupon the counsel for the defendants did then and there insist before his honor, the said justice, on the behalf of the said defendants, that the said several matters so produced and given in evidence on the part of the said defendants as aforesaid, was sufficient, and ought to be admitted and allowed as decisive evidence to entitle the said defendants to a verdict, and to bar the said plaintiffs of its action aforesaid; and the said counsel for the defendants did then and there pray his honor, the justice, to admit and allow the matters so produced and given in evidence for the said defendants to be conclusive evidence in favor of the said defendants, to entitle them to a verdict in this cause, and to bar the said plaintiff of his action aforesaid; but to this the counsel for the said plaintiff did then and there object, and insist before the said justice that the same were not sufficient, nor ought to be ad-